

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DAVID JAMES WHATLEY, JR.,)
vs. Plaintiff,) NO. CIV-07-384-D
JUSTIN JONES, et al.,)
Defendants.)

ORDER

Plaintiff, a state prisoner appearing *pro se*, brought this action pursuant to 42 U.S.C. § 1983, alleging that defendants have violated his constitutional rights; he did not seek leave to proceed *in forma pauperis*, and paid the required filing fee. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Valerie K. Couch for initial proceedings.

On September 27, 2007, the Magistrate Judge filed a Report and Recommendation [Doc. No. 12] in which she recommended that this action be dismissed without prejudice because the plaintiff failed to obtain service upon the defendants within 120 days after filing the Complaint, and the plaintiff has not shown good cause for his failure to serve the defendants within the time period required by Fed. R. Civ. P. 4(m). The Magistrate Judge further noted that, by Order of August 3, 2007, the plaintiff was cautioned that his failure to timely serve the defendants or to show cause for his failure to do so could result in dismissal of this action; in that Order, the Magistrate Judge *sua sponte* granted the plaintiff additional time until September 4, 2007 to perfect service upon the defendants.

Plaintiff did not respond to the Order. As of September 27, 2007, he had failed to serve the defendants or to respond to any of the orders directing him to do so.

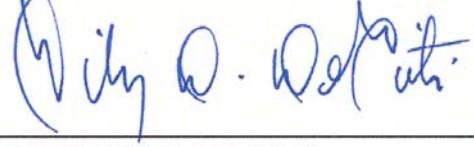
In the Report and Recommendation, the Magistrate Judge discussed the plaintiff's failure

to timely perfect service or to respond to the orders issued; she also fully considered whether, under the circumstances, he should be granted additional time to comply with Fed. R. Civ. P. 4(m). She concluded that additional time was not warranted under the circumstances. Accordingly, she recommended that this action be dismissed without prejudice.

In the Report and Recommendation, the Magistrate Judge advised Plaintiff of his right to object to same and scheduled an October 17, 2007 deadline for filing such objections. The Magistrate Judge also advised Plaintiff that a failure to timely object would constitute a waiver of his right to appellate review of the factual and legal issues contained in the Report and Recommendation.

Plaintiff's deadline for objecting to the Report and Recommendation has expired, and he has not filed an objection. The Court also notes that, to date, he has not filed returns of service and has not filed any response to the Magistrate Judge's previous orders. Therefore, the Report and Recommendation [Doc. No. 12] is adopted as though fully set forth herein. This action is DISMISSED without prejudice to the filing of a new action.

IT IS SO ORDERED this 2nd day of November, 2007.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE